

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EDWIN ZAYAS, Individually and on Behalf
of All Others Similarly Situated,

Plaintiffs,

-against-

207th STREET REALTIES LLC and
ALTAGRACIA I. ABREU,

Defendants.

17 CV 9724 (VSB)(KHP)

ANSWER TO AMENDED COMPLAINT

Jury Trial Demanded

Defendant 207th Street Realities, LLC ("207 Street"), by its attorneys The Silber Law Firm, LLC, for its Answer to plaintiffs' Amended Complaint, avers and states as follows:

1. Denies the allegations contained in paragraph 1 of the Amended Complaint.
2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Amended Complaint except states that the Amended Complaint speaks for itself.
3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Amended Complaint except states that the Amended Complaint speaks for itself.
4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 4-7 of the Amended Complaint and states that any statute speaks for itself and otherwise refers questions of law to this Court.
5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Amended Complaint.
6. Admits the allegations contained in paragraph 9 of the Amended Complaint.

7. Admits the allegations contained in paragraph 10 of the Amended Complaint as to ownership and the tenant in place at the subject property, and denies knowledge or information sufficient to form a belief as to the remainder of paragraph 10.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Amended Complaint.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Amended Complaint.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 13-15 of the Amended Complaint except denies that it failed to comply with any applicable law or regulation. 207 Street states further that there are no grounds for the formation or certification of any class.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 16-27 of the Amended Complaint and states that any statute speaks for itself and otherwise refers questions of law to this Court.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28 of the Amended Complaint.

13. Admits the allegations contained in paragraph 29 of the Amended Complaint as to ownership and the tenant in place at the subject property, and denies knowledge or information sufficient to form a belief as to the remainder of paragraph 29.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30 of the Amended Complaint.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31 of the Amended Complaint.

16. Denies knowledge or information sufficient to form a belief as to the truth of

the allegations contained in paragraph 32 of the Amended Complaint.

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 33 of the Amended Complaint and states that any public document speaks for itself.

18. Denies the allegations contained in paragraph 34 of the Amended Complaint.

19. Denies the allegations contained in paragraph 35 of the Amended Complaint.

20. Denies the allegations contained in paragraph 36 (and subparts) of the Amended Complaint and states that any statute speaks for itself and otherwise refers questions of law to this Court.

21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 37 of the Amended Complaint.

22. Denies the allegations contained in paragraph 38 of the Amended Complaint.

23. Denies the allegations contained in paragraph 39 of the Amended Complaint and states that plaintiff does not have a sincere or legitimate desire to return to the subject property except to further manufacture complaints against defendants.

24. Deny the allegations contained in paragraph 40 of the Amended Complaint and states that to the extent that any minor variation exists such does not violate any rule or law, and states further that no remedial action is necessary.

25. Deny the allegations contained in paragraph 41 of the Amended Complaint and states that to the extent that any minor variation exists such does not violate any rule or law, and states further that no remedial action is necessary.

AS AND FOR A RESPONSE TO THE FIRST CAUSE OF ACTION

26. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 42 of the Amended Complaint and state that any

statute speaks for itself and otherwise refers questions of law to this Court.

27. Denies the allegations contained in paragraph 43 of the Amended Complaint.

28. Denies the allegations contained in paragraph 44 of the Amended Complaint and states that to the extent that any minor variation exists such does not violate any rule or law, and states further that no remedial action is necessary.

29. Denies the allegations contained in paragraph 45 of the Amended Complaint and states that to the extent that any minor variation exists such does not violate any rule or law, and states further that no remedial action is necessary.

30. Denies the allegations contained in paragraph 46 of the Amended Complaint and states that to the extent that any minor variation exists such does not violate any rule or law, and states further that no remedial action is necessary.

31. Denies the allegations contained in paragraph 47 of the Amended Complaint and states that to the extent that any minor variation exists such does not violate any rule or law, and states further that no remedial action is necessary.

32. Denies the allegations contained in paragraph 48 of the Amended Complaint and states that to the extent that any minor variation exists such does not violate any rule or law, and states further that no remedial action is necessary. 207 Street states that any statute speaks for itself and otherwise refers questions of law to this Court.

33. Denies the allegations contained in paragraph 49 of the Amended Complaint and states that to the extent that any minor variation exists such does not violate any rule or law, and states further that no remedial action is necessary.

34. Denies the allegations contained in paragraph 50 of the Amended Complaint and states that to the extent that any minor variation exists such does not violate any rule or law, and states further that no remedial action is necessary. 207 Street states that any

statute speaks for itself and otherwise refers questions of law to this Court.

35. Denies the allegations contained in paragraph 51 of the Amended Complaint.

36. Denies the allegations contained in paragraphs 52-59 of the Amended Complaint and states that any statute speaks for itself and otherwise refers questions of law to this Court.

37. Denies the allegations contained in paragraph 60 of the Amended Complaint and states that there are no actionable violations, as alleged or suggested.

38. Denies the allegations contained in paragraphs 61-63 of the Amended Complaint and states that any statute speaks for itself and otherwise refers questions of law to this Court.

AS AND FOR A RESPONSE TO THE SECOND CAUSE OF ACTION

39. Defendant 207 Street restates and reavers all of the foregoing

40. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 65 of the Amended Complaint and states that any statute speaks for itself and otherwise refers questions of law to this Court.

41. Denies the allegations contained in paragraphs 66-72 of the Amended Complaint and states that any statute speaks for itself and otherwise refers questions of law to this Court.

AS AND FOR A RESPONSE TO THE THIRD CAUSE OF ACTION

42. Defendant 207 Street restates and reavers all of the foregoing

43. Denies the allegations contained in paragraphs 74-76 of the Amended Complaint.

44. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 77 of the Amended Complaint, but denies any

wrongdoing or that any Court or State action is required in this case.

AS AND FOR A RESPONSE TO THE FOURTH CAUSE OF ACTION

45. Defendant 207 Street restates and reavers all of the foregoing

46. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 79 of the Amended Complaint and states that any statute speaks for itself and otherwise refers questions of law to this Court.

47. Denies the allegations contained in paragraph 80 of the Amended Complaint.

48. Denies the allegations contained in paragraph 81 of the Amended Complaint.

49. Denies the allegations contained in paragraph 82 of the Amended Complaint.

50. Denies the allegations contained in paragraph 83 of the Amended Complaint.

51. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 84 of the Amended Complaint, but denies any wrongdoing or that any Court or State action is required in this case.

52. Denies the allegations contained in paragraph 85 of the Amended Complaint.

AS AND FOR A RESPONSE TO THE FIFTH CAUSE OF ACTION

53. Defendant 207 Street restates and reavers all of the foregoing

54. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 87 of the Amended Complaint.

55. Denies the allegations contained in paragraph 88 of the Amended Complaint.

56. Denies the allegations contained in paragraph 89 of the Amended Complaint.

57. Denies the allegations contained in paragraph 90 of the Amended Complaint.

58. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 91 of the Amended Complaint, but denies any wrongdoing or that any Court or State action is required in this case.

59. Denies the allegations contained in paragraphs 92-93 of the Amended Complaint and states that any statute speaks for itself and otherwise refers questions of law to this Court.

60. Denies the allegations contained in paragraph 94 of the Amended Complaint.

AS AND FOR A RESPONSE TO THE SIXTH CAUSE OF ACTION

61. Defendant 207 Street restates and reavers all of the foregoing

62. Denies the allegations contained in paragraph 96 of the Amended Complaint.

Affirmative Defenses

63. Plaintiff lacks standing to bring this action or to assert his claims.

64. Plaintiff is a “tester,” and demonstrates that he has never had a *bona fide* need or desire, or any ongoing or future need or desire to ever again visit the subject place of business, depriving him of standing in this case.

65. Plaintiff has no legitimate need or desire to patronize the subject place of business.

66. Plaintiff may not demand any relief to the extent that he has not experienced any alleged barrier or discrimination.

67. Plaintiffs has failed to state a cause of action.

68. Any remediation demanded by plaintiff exceeds the reasonable costs that defendants are obligated to expend, and their removal or repair is not readily achievable or is infeasible, unreasonable or impossible in this setting, or is otherwise not required by law.

69. The subject place of business was constructed prior to 1992 and has not been altered since then, as defined by the ADA.

70. Plaintiff’s motivation here is to manufacture claims so as to generate fees for

his attorneys and that such bad faith precludes any recovery or relief.

71. Plaintiff failed to give defendant 207 Street notice that remediation was required before this action was commenced, such that defendants had no opportunity to address or cure any alleged violations or defects.

72. At no time has defendant 207 Street intended to prevent access to plaintiff or any disabled individual.

WHEREFORE, defendant 207 Street respectfully request that this action be dismissed in all respects, with prejudice, and for an award of its legal fees and costs incurred, and for such other relief as this Court deems just and correct.

Dated: August 13, 2018

THE SILBER LAW FIRM, LLC

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